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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 278 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JJ JOSHI

Versus

STATE OF GUJARAT

Appearance:

MR KN RAVAL for Petitioner

Mr.P.S.Champaneri, A.G.P. for Respondents

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 01/05/96

ORAL JUDGEMENT

Petitioner, a Police personnel in the cadre of Police Inspector, serving at the relevant time in the office of Director, Anti-corruption Bureau, has by this petition prayed for issuance of writ of mandamus or any other appropriate writ to quash and set aside the memos at Annexures A & C and the adverse remarks at Annexure E.

Few facts as to how the memos at Annexures A & C came to be served on the petitioner is required to be stated. Petitioner has some rub with the then Spl.I.G.P. and Director, A.C.B. with regard to some official matter. Petitioner became apprehensive of the same, which ultimately came to be true and he received the memo at Annexure A and then Annexure C also. On receipt of these memos, he made representations, but of no avail and ultimately an adverse remark at Annexure E is made, on the basis of the said memos at Annexures A & C, in his confidential report. These entries in the confidential report based on Annexures A & C are challenged on the ground that necessary procedure as contemplated under the Rules is not followed; and that the same is mala fide and with ulterior motive.

Petitioner was entrusted with an enquiry of the allegations of non-payment of compensation in acquisition of lands for Sitapur-Bahucharaji road. The same was against Deputy Collector and the concerned delinquent officer of Viramgam. On enquiry, the petitioner recommended that the departmental proceedings should be held in order to collect proper evidence and if it is found in the departmental proceedings that there is evidence against the concerned delinquent officer, then appropriate steps be taken. This report was also approved by petitioner's immediate superior, the then Dy. Director of ACB. The concerned delinquent officer involved in the enquiry did not appreciate this action of the petitioner in not completely exonerating and recommending that no steps should be taken. The petitioner apprehended that the delinquent may bring pressure on the higher officers against the petitioner. Trap against the officer could not be arranged and no reasons are assigned therefor. This itself would show hollowness of the charges against the petitioner and the hunch in the mind of the petitioner came to be true. It is known in the Department that if a trap could not be arranged, then enquiries are required to be conducted to ascertain the veracity of the allegations. No such enquiry was held and the memo, Annexure A, was issued. The petitioner submitted his explanation. Petitioner came to be served with another memo, alleging that he demanded two pieces of furniture. However, said furniture did not reach the petitioner's place. No explanation was also called for, for this allegation. Both these memos were kept with ephemeral roll and ultimately the same is entered in the confidential report of the petitioner. The representation of the petitioner came to be futile and the present petition is filed to quash the same.

Main ground of challenge to quash these adverse remarks from the confidential report is that necessary enquiry into the allegations is not held as per the Rules and, therefore, the remarks being in contravention of the Rules, should be quashed. As the Memos at Annexures A & C and ultimately adverse remarks at Annexure E pertain to integrity of the petitioner, concerned officers are required to follow instructions regarding writing and maintenance of annual confidential report pertaining to integrity, as prescribed vide resolution dated 18.3.74. Said resolution is provided to streamline proper reporting against item of integrity in the confidential report by the Reporting Officer. The Vigilance Commission had made the following suggestions, which has been accepted by the Government for implementation:-

"A system of healthy reporting of assessment of work of character of an official needs considerable attention. The tendency to make a non-committal report should be avoided, where the Superior Officer is doubtful about the integrity of an employee though he has positive information. Where a positive report about integrity cannot be made, the particular column, should be kept blank and a 'secret' report should be submitted which should be verified through ACB or CID. His name should be kept in the list of doubtful integrity till it is cleared".

In view of this suggestion from the Vigilance Commission, Government amended the Government resolution, General Administration Department no.KHL-1169-K dated 8.3.69. In the said resolution, para 17 pertains to integrity and the relevant amendment of that resolution reads as under:-

"17. There is a column in the annual confidential report regarding every public servant where the Reporting Officer has to comment on integrity. The Reporting Officer should in the first place be required to give a definite opinion whether or not he considers the persons concerned to be above board. If the Reporting Officer does not have enough information for forming a definite opinion as may often be the case, the following procedure for filling up the column relating to integrity should be followed:

- (a) Supervisory officers should maintain a confidential diary in which instances which create suspicion about the integrity of a subordinate should be noted from time to time and

action to verify the truth of such suspicious should be taken expeditiously by making confidential enquiries departmentally or by referring the matter to the Anti-Corruption Bureau or the Crime Investigation Department. At the time of recording the Annual Confidential Report, this diary should be consulted and the material in it be utilized for filling the column about integrity, if the column is not filled on account of the unconfirmed nature of the suspicious, further action should be taken in accordance with the following sub-paragraphs.

- (b) The column pertaining to integrity in the character roll should be left blank and a separate secret note about the doubts and suspicious regarding the officer's integrity should be recorded simultaneously and followed up.
- (c) A copy of the secret note should be sent together with the character roll to the next superior officer who should ensure that the follow-up action is taken with due expedition.
- (d) If, as a result of the follow-up action, an officer is exonerated, his integrity should be certified and an entry to that effect be made up the character roll. If suspicious regarding his integrity are confirmed, this fact should also be recorded and duly communicated to the officer concerned.
- (e) There are occasions when a reporting officer cannot in fairness to himself and to the officer reported upon, either certify integrity or make an adverse entry, or even be in possession of any information which should enable him to make a secret to the Head of the Department. Such instances can occur, when an officer is serving in a remote station and the reporting officer has not had occasion to watch his work closely or when an officer has worked under the reporting officer only for a brief period or has been on long leave, etc. In all such cases, the reporting officer should make an entry in the "integrity" column to the effect that he has not watched the officer's work for sufficient time to be able to make any definite remark or that he has heard nothing against the officer's integrity, as the case may be. This would be a factual statement to which there can be no objection. But it is necessary that a superior officer should make every effort to form a definite judgment about the integrity of those working under him, as

early as possible, so that he may be able to make a positive statement.

- (f) There may be cases in which after a secret report/note has been recorded expressing suspicion about an officer's integrity, the inquiries that follow do not disclose sufficient material to remove the suspicion or to confirm it. In such a case, the officer's conduct should be watched for a further period and in the meantime he should, as far as practicable, be kept away from positions in which there are opportunities for indulging in corrupt practices".

As per this amended instructions, for filling up the column relating to integrity, a procedure is required to be followed. Admittedly, in the instant case where it is alleged by the petitioner specifically that such a procedure is not followed, the affidavit-in-reply of the officer concerned also confirms the same. The ground as to non-compliance of the said procedure is ground (C) in the petition, which reads as under:-

"(C). The petitioner further respectfully submits that even the adverse remarks mentions "his integrity cannot be guaranteed in view of this memo number.....". There is, therefore, no positive assertion that the petitioner's integrity is doubtful or that it is beyond doubt. All that is alleged that his integrity cannot be guaranteed. Under such circumstances, where there is some doubt as to whether the integrity is doubtful, the Government has laid down a procedure by Government Resolution at Annexure G, which amends the earlier resolution dated 8.3.69. The effect of the resolution is that when the reporting officer does not have information for forming a definite opinion, then they should maintain a confidential diary, noting the conduct of the concerned officer and also making the confidential inquiries departmentally or referring the matter to the Anti-Corruption Bureau. In case there is no sufficient material to opine against the integrity, then it has been suggested that this column of integrity in character should be left blank and a separate secret note should be attached with follow-up action taken. If, as a result of follow-up action, an officer is exonerated, then this should be recommended and communicated to the Officer concerned. The petitioner, therefore, respectfully submits that it was incumbent in

view of the resolution to firstly leave the column on integrity blank and secondly to take up a follow-up action to determine the veracity of the charges made. Neither of these courses of action have been adopted in the petitioner's case and the respondents have deviated from this declared policy of the State Government by giving the impugned adverse remarks at Annexure E hereto. On this ground of deviation of the declared policy also, the petitioner submits that the impugned action deserves to be quashed and set aside".

Mr.D.J.Parmar, Under Secretary to the Government of Gujarat, Home Department, has filed affidavit-in-reply, wherein he has stated as under:-

"3 As regards the contentions of the petitioner that the procedure laid down in Government Resolution, General Administration Department dated 18.3.74, has not been properly followed by the Government, I respectfully submit that the Director received information for being the instances mentioned in the said memos from reliable sources and the same were conveyed by the Director to the petitioner by calling him in person. This information was also conveyed to the petitioner in writing by the Director under the two memos dated 1.12.82 and 29.1.83 (Annexures A & C to the petition). It can be seen there from that the information received by the Director was very disturbing, concerning the integrity of an officer of Anti-Corruption Bureau. In the circumstances, action to verify the truth of these instances by making confidential inquiries had, therefore, not been taken for such obvious reasons by the Director, A.C.B."

After this affidavit-in-reply, petitioner has filed affidavit-in-rejoinder, wherein he has further averred as under:-

"The vague averment in para 3 of the affidavit as to why an inquiry was not held has been based on so-called obvious reasons is an attempt to mislead this Hon'ble Court into not allowing the petition even though there is admittedly breach of the declared policy of the Government. The petitioner has reliably learnt that the Assistant Director who was the petitioner's immediate superior and reporting officer, felt constrained to make adverse entries in the confidential

reports because of the memo kept on record of the Ephemeral rolls. However, the very same Assistant Director by communication bearing no.VRS/PI/ER/83, dated 3.2.83 has clearly asserted that on keeping a watch on the petitioner there is nothing suspicious noticed in the petitioner's activities and if any particular evidence is pointed out to him, he is prepared to investigate the same. In other words, the immediate supervisor of the petitioner had kept a watch over the petitioner after issuance of the notice and thereafter categorically asserted that there is no suspicion against the petitioner".

Thus, it is clear from the above averment in the petition, affidavit-in-reply and affidavit-in-rejoinder that the confidential enquiry departmentally or referring the matter to the ACB or crime investigating department ought to have been done is not done in the instant case. On the contrary, the immediate superior of the petitioner has kept a watch over the petitioner after issuance of the notice and thereafter categorically asserted that there is no suspicion against the petitioner. Thus, in the instant case, despite the resolution of 18.3.74, procedure required to be followed for filling up the column relating to integrity has not been followed. According to the department, there are two instances, which created suspicion about the integrity of the petitioner, but neither of them is tested by taking action to verify the truth of that suspicion. It can be said that confidential enquiries departmentally was made through his immediate superior, who had given him a clean chit. No enquiry is made by referring the matter to ACB or Crime investigation Department. There is no question of consulting the diary of such department and, therefore, it can be said that necessary procedure before filling the column relating to integrity is not followed. In case where suspicion as to integrity is unconfirmed, then there is further procedure to be followed and the column is required to be left blank and a secret note is to be made about the doubts and suspicion regarding the officer's integrity. Copy of that secret note is required to be sent together with the character roll to the next superior officer, who is required to take necessary follow-up action in the matter and if the officer is exonerated as a result of the follow-up action, his integrity should be certified and if the suspicion are confirmed, the same should be recorded. Here, in the instant case, the superior officer has given him a clean chit and there is nothing on the record that his superior officer has confirmed this suspicion. Thus,

when the procedure contemplated for vouchsafing the integrity of the officer is not followed and when the report of the superior officer is on the contrary and more particularly when the memos appear to be on mere ipsi dixit, the same are required to be quashed and set aside. Instructions pertaining to filling in the column of integrity are required to be scrupulously followed inasmuch as it not only spoils the career of the officer, but it spoils the officer himself, if the remarks are entered without due care and caution. For taking due care and caution, necessary procedure is provided in the resolution and not following the same, in my opinion, should vitiate that report and is required to be quashed and set aside.

In the result, the petition is allowed. Memos at Annexures A & C and the adverse remarks as a consequent thereof at Annexure E are hereby quashed and set aside. Rule made absolute with costs.
